any specific problems with Verizon's Commission-approved dark fiber processes, Cavalier's proposed changes in that process are unnecessary, burdensome, and unjustified by law. The Bureau should reject them.

A. Cavalier's Dark Fiber Queue Proposal Is Unduly Burdensome And Unnecessary

Cavalier's proposal would require Verizon to place Cavalier's unsatisfied dark fiber requests in a queue for a period of two to four years. Cavalier's Proposed Section 11.2.15.4.1. There is, however, no need for a queue because Verizon's existing system is designed to reduce the number of dark fiber requests that are rejected in the first instance. If fiber is unavailable on Cavalier's requested routes, Verizon will search for alternative routes through intermediate offices in order to fill Cavalier's request. Verizon's Proposed Section 11.2.15.4.

Furthermore, there is no guarantee that Cavalier would even take the fiber if it should become available after two (or four) years. Indeed, given the pace of regulatory, market, and technological changes in the telecommunications industry, two to four years is an inordinately long time. If a particular fiber route is unavailable, Verizon assumes that, after two (or four) years has passed, Cavalier will have found another way to provide its planned service. *Albert Panel Direct* at 18:9-14.

Cavalier erroneously claims that a queue system will "reduce the burden" on Verizon (*Ashenden Direct* at 3:4). Verizon does not have a system to conduct dark fiber inquiries on a mechanized basis. Therefore, as Verizon witness Albert explained, Cavalier's proposal would require Verizon to conduct a manual engineering query every day for a period of up to four years. *Hearing Tr* at 284:2-6 (Albert). A queue system will therefore only increase Verizon's administrative burdens. *Albert Panel Rebuttal* at 11:7-9.

Furthermore, Verizon would likely have to bear these burdens, not just for Cavalier, but for other carriers as well. If the Bureau approves Cavalier's queue proposal, it would be available to any Virginia CLEC adopting this Agreement's dark fiber provisions. Verizon would therefore be required to establish a sophisticated system for conducting continual manual dark fiber inquiries for years for multiple routes – again, with no guarantee that a CLEC will still want to purchase the dark fiber if and when it does become available. *Albert Panel Direct* at 18:17 – 19:1.

Cavalier compares its proposed dark fiber queue to the collocation queue process (*Ashenden Direct* at 2:22 – 3.2), but collocation and dark fiber are very different products. The collocation queue process applies only to central offices with no physical collocation space available, and there are currently only five of these in Virginia. By contrast, Verizon has thousands of assignable fiber optic cable segments in Virginia. *Albert Panel Direct* at 19:6-10. In fact, there is no "queue" process for any UNE, nor has any CLEC requested one. *Albert Panel Rebuttal* at 12:5-9.

Nothing in the Act requires Verizon to set up this kind of complex, burdensome, manual queue system for CLECs, requiring large expenditures for little or no benefit.[4] Verizon witness Albert explained that the annual cost of a queue for just one dark fiber segment would be upwards of $60,000. *Hearing Tr* at 285:16 (Albert).

Therefore, the Bureau should reject Cavalier's contract language establishing a dark fiber queue.

[4] *See Virginia § 271 Order* ¶ 34 (an incumbent is obligated to provide a CLEC with the same information that it provides itself), ¶ 35 n.98 (*citing UNE Remand Order* ¶ 427 ("If an incumbent LEC has not compiled such information for itself, we do not require the incumbent to … construct a database on behalf of requesting carriers "))

B. Verizon Does Not Have, Nor Does Cavalier Need, The Detailed "Connectivity Map" That Cavalier Requests

Verizon will, at Cavalier's written request, create a fiber layout map showing existing fiber within a designated wire center for Cavalier's use in performing preliminary network planning and engineering work. Verizon will provide these maps at time and materials charges, subject to a non-disclosure agreement that limits disclosure to Cavalier personnel that need the fiber layout information to design Cavalier's network. *Verizon's Proposed Section* 11.2.15.5. Cavalier would add language to Verizon's Proposed Section 11.2.15.5 that would require Verizon to create and provide a more detailed fiber connectivity map. *Albert Panel Direct* at 20 15 – 21:2.

Cavalier's fiber connectivity map proposal is unreasonable and unnecessary because Verizon does not have standard maps with the detailed information that Cavalier's proposal would require (*Hearing Tr.* at 230:17-18 (Albert)), because Verizon already provides wire-center-specific fiber layout maps, and because Verizon already searches for alternative routes between wire centers when the requested route is unavailable. Cavalier thus has no need for detailed information about all fiber routes in the entire LATA. There may have been more of a need for the information Cavalier seeks here prior to the Bureau's ruling in the *Virginia Arbitration Order*, but that order made it clear that CLECs are no longer responsible for searching out alternative routes between wire centers when the requested route is unavailable. Now, Verizon is responsible for this work, and therefore Verizon's existing measures satisfy any legitimate need Cavalier has for network planning. *Albert Panel Rebuttal* at 13:2-7; *Hearing Tr.* at 239:2-10 (Albert).

Cavalier has provided no support for its assertion that "Cavalier's suggested map format is the same one used by vendors of dark fiber other than Verizon." *Ashenden Direct* at 3:15-16.

In response to a discovery request to Cavalier to produce a map that Cavalier received from one of the "typical vendors" to which Cavalier witness Ashenden refers in his testimony, Cavalier only produced a map that Cavalier generated itself. *See Verizon's Request for Production* C10-1 and *Cavalier's Responses,* attached at Exhibit 3. Furthermore, any comparison between Verizon's offerings and those of dark fiber vendors is irrelevant. Verizon is not a dark fiber vendor.

C. Cavalier's Proposal For A "Joint Field Survey" Is Unnecessary, Unduly Burdensome, And Unlikely To Serve Cavalier's Stated Purpose

Verizon has agreed to perform a field survey, at Cavalier's request and for time and materials charges, to physically verify whether fiber is available between designated Verizon central offices. Verizon's Proposed Section 11.2.15.5(ii); *Albert Panel Direct* at 21:11-16. Cavalier, however, seeks to require field surveys conducted jointly by Verizon and Cavalier. Cavalier's Proposed Section 11.2.15 5(ii). If Cavalier's language is adopted, the engineers and construction crews who conduct field surveys would be required to make appointments with Cavalier, limiting their ability to schedule their own work in an efficient manner.

Cavalier has suggested that a joint field survey would "limit the scope of potential disagreement between Cavalier and Verizon ... by bringing engineers and technicians together in the field." *Ashenden Direct* at 4:2-5. As Verizon witness Albert explains, however, the Verizon technicians doing the field surveys are not the right people to answer questions for Cavalier's engineers:

> the employees of Verizon that do the fieldwork for a field survey, those people are cable splicers, those are the unionized individuals in the bucket trucks and pumping out the manholes. Those are the individuals, and usually you'll send out a pair of them, to actually do the field verification of what's working and what's spare and what exists. Now, those people are not going to be able to answer questions that your engineers may have

> or they're not going to be able to answer questions relative to, you know, can you provide dark fiber or what can you do to provide dark fiber.

Hearing Tr. at 239:5-13 (Albert). Joint surveys would therefore add complexity and inefficiency, but little or no value. *Albert Panel Direct* at 13:15-17.

D. There Is No Need For A Dispute Resolution Mechanism Specifically For Dark Fiber Disputes

Cavalier proposes language that would require the parties "to negotiate in good faith to devise a viable, alternative means of resolving any disputes about the availability of dark fiber, if the maps or field survey process described [in Cavalier's proposal] leave either party with doubt or uncertainty about the availability of dark fiber." Cavalier's Proposed Section 11.2.15.5. The parties have already agreed upon dispute resolution procedures to govern disputes under their Agreement. Verizon's Proposed Section 28.11. These procedures would cover disputes about dark fiber availability so there is no need for the parties to specify different dispute resolution procedures for different kinds of disputes.

Indeed, Cavalier's language does not explain how the negotiated dark-fiber-specific dispute resolution mechanism should differ from the general dispute resolution procedures; it simply directs the parties to negotiate a dark-fiber-specific procedure. In addition, there would be no objective standards for triggering the contemplated dark fiber dispute resolution procedures; Cavalier could invoke it whenever it had a subjective feeling of "doubt or uncertainty" about the accuracy of the fiber maps or field surveys. Cavalier's proposal thus would likely lead to costly and unnecessary disputes and should be rejected. *Albert Panel Direct* at 22:4-14.

E. Cavalier Does Not Require The Expanded Information It Requests In Response To A Dark Fiber Inquiry; If Cavalier Requires Such Information, Cavalier Could Obtain It Through A Field Survey

Cavalier's Proposed Section 11.2.15.4 would require Verizon to provide greatly expanded information to a Dark Fiber Inquiry from Cavalier – much more information than any other CLEC has requested. Under Cavalier's proposal, Verizon would have to specify whether fiber is: (i) installed and available, (ii) installed but not available, or (iii) not installed. Where fiber is not available, Verizon would have to describe in detail why fiber is not available, "including, but not limited to, specifying whether fiber is present but needs to be spliced, whether no fiber at all is present between the two points specified by Cavalier, whether further work other than splicing needs to be performed, and the nature of any such further work other than splicing" Cavalier's Proposed Section 11.2.15.4. If fiber is installed, whether or not it is available, then Verizon would also have to specify "the locations of all pedestals, vaults, other intermediate points of connection...[and] which portions have available fiber and which portions do not." *Id*

Like many of Cavalier's proposals, this one would impose expansive (and expensive) new obligations upon Verizon for no good reason. For example, Cavalier would require Verizon to specify whether "fiber is present but needs to be spliced." Cavalier's Proposed Section 11.2.15.4. This information is unnecessary because Verizon has no obligation to provide access to dark fiber at splice points, as the Commission (and the Bureau) have confirmed. *Triennial Review Order* ¶ 254; *Virginia Arbitration Order* ¶ 451.

Likewise, there is no basis for Cavalier's request to know the locations of all pedestals, vaults, other intermediate points of connection, and whether dark fiber is available at any of these points. In section 271 proceedings involving Virginia and other states, the Commission held that the dark fiber information that Verizon provides is sufficient. *See, e.g., Virginia § 271 Order* ¶¶ 145-147; *MD/DC/WV § 271 Order* ¶¶ 123-126.

Cavalier states that its proposed language is intended to "reduce uncertainty about whether fiber is 'terminated.'" *Ashenden Direct* at 2:15-16. There should be no uncertainty on this point; terminated dark fiber is fiber that is physically connected to accessible terminals. As Verizon witness Shocket explained at the Hearing, Verizon does not "partially terminate [dark] fiber." Rather, Verizon "fully connect[s] it to the fiber distribution panel in each of the central offices." *Hearing Tr.* at 244:13-16 (Shocket).

Finally, the cost of providing the information sought by Cavalier is not included in Verizon's rates for dark fiber inquiries. *Albert Rebuttal* at 12:15-18. As Verizon witness Albert explained at the hearing, the dark fiber "inquiry was developed to be something fast and relatively cheap and not contain a lot of information so the CLECs get a quick go or no-go answer inquiry process." *Hearing Tr.* at 284:19-22 (Albert). If Cavalier is not satisfied with the response it receives to the dark fiber inquiry and requires more detailed information, Cavalier can obtain such information though a more detailed, "one of a kind" field survey. *Hearing Tr.* at 220:15-22; 289:14-18 (Albert).

For all of the reasons stated above, the Bureau should reject Cavalier's proposed changes to Verizon's proposed contract language regarding dark fiber.

IX. THE BUREAU SHOULD ADOPT VERIZON'S PROPOSAL TO PROVIDE UNDBUNDLED LOOPS TO CUSTOMERS SERVED BY IDLC BECAUSE IT COMPLIES WITH THE *TRIENNIAL REVIEW ORDER* (ISSUE C14)

Verizon has shown, and Cavalier has not disputed, that Verizon's proposal to provide unbundled loops to customers served by Integrated Digital Loop Carrier ("IDLC") is consistent with the Commission's *Triennial Review Order*. *Albert Panel Rebuttal* at 13:23 – 14:20.

Cavalier, however, urges the Bureau to impose requirements that the Commission did not – specifically, Cavalier would require Verizon to develop two new methods of unbundling IDLC loops. Verizon has shown that these methods are impractical and excessively expensive, and Cavalier's proposal should therefore be rejected.

In the *Triennial Review Order*, the Commission ruled that incumbent carriers had the option of providing unbundled loops to customers served by IDLC through either a spare copper facility, or a Universal Digital Loop Carrier ("UDLC") system, or another "technically feasible method of unbundled access." *Triennial Review Order* ¶ 297. The Commission did not require incumbents to unbundle loops served by IDLC. Indeed, the Commission observed that unbundled access to IDLC-served loops is "not always desirable for either carrier." *Id.* at ¶ 297 n. 855.

Verizon's proposal meets the *Triennial Review Order* requirements. Under that proposal, when Verizon receives a request for an unbundled 2-wire analog loop for a customer served by IDLC, Verizon checks to see whether the customer can be served by a spare UDLC or copper loop. If such a spare loop is available, it is used. If such a loop is not available, however, Verizon checks to see whether it can rearrange loops among its customers to make a non-IDLC loop available. This process is called a line and station transfer. If a line and station transfer is not possible, the CLEC may then request that Verizon construct additional loop facilities – a new step in the process that Verizon has instituted because of the *Triennial Review Order*. If a CLEC makes such a request, Verizon will initiate an engineering job to construct additional facilities to provide either a copper loop or a UDLC loop. *Albert Panel Rebuttal* at 14:10-20. Of course, Cavalier may also elect to serve the customer using UNE-P, resale, or subloops, rather than by having Verizon construct new facilities. *Albert Panel Rebuttal* at 15:16-17; *Hearing Tr.* at

108:20 (Clayton).

In most instances, Verizon can provide an unbundled loop for a customer served by IDLC without constructing additional loop facilities. In fact, only about one percent of Verizon's working access lines in Virginia are located at an outside plant terminal where only loops on IDLC are available. *Hearing Tr* at 545:13 (Albert). It is in these rare instances that, in response to the Commission's direction in the *Triennial Review Order*, Verizon has offered the option of additional construction to CLECs. *Hearing Tr* at 531:11 – 532:1 (Albert).

The rates that Verizon proposes to charge in these unusual cases – line and station transfer, engineering query, engineering work order, and time and materials charges – are the same or lower than the rates that were included as part of Verizon's section 271 application in Virginia. *Albert Panel Rebuttal* at 15:4-12. It is up to Cavalier whether it passes all or a portion of these charges on to its customers. When Verizon constructs new facilities for its customers in Virginia, it does not pass the construction costs on to those customers. Cavalier is free to do the same. *Hearing Tr.* at 561:7-8 (Clayton).[5]

Cavalier asks the Bureau to impose an additional requirement to develop and trial two specific new methods of unbundling IDLC loops. Cavalier's Proposed Section 11.4.1. Verizon, however, has already evaluated the new methods – hairpin/nailup and multiple switch hosting – described by Cavalier and explained why Cavalier's proposal, if adopted, would be a waste of time and money. In 2000, at Cavalier's request, Verizon prepared an engineering evaluation of the hairpin approach and gave it to Cavalier *Albert Panel Rebuttal* at 18:4-10; Exhibit C. This analysis concluded that "hairpin/nail-up is not a cost justifiable architecture for unbundled loop hand-offs using a DS1 interface. For unbundled loops ordered for end users currently served on

[5] For a more detailed description of the changes that Verizon has made to its processes and procedures in light of the *Triennial Review Order*, please refer to *Albert Panel Rebuttal*; Exhibit A

IDLC, it is more economical to continue to use current methods by moving the loop to Universal DLC, or parallel copper, if available." These conclusions are still valid today. *Albert Panel Rebuttal* at 18:10-13. As Verizon witness Albert explained at the Hearing:

> [Verizon] did that work back in July 2000. I've probably got about $50,000 worth of engineering time into that analysis that [Verizon] did at Cavalier's request. If you read that document, that basically includes more depth and more information relative to the hairpin method than what [Verizon] would typically create for the readout of a first stage trial, for getting the electrons to flow, to see if it would even work. Now, the conclusion of that analysis, Exhibit C in my testimony, is yes, we believe that you could get the electrons to flow. But the punch line is that it would be tremendously more expensive to develop and to invent than the two methods that we will make available to Cavalier in these very narrow circumstances.

Hearing Tr. at 530:16 – 531.10. Mr. Albert also explained that an MCI document identified hairpinning as the least desirable potential unbundling technique to be used when end users were served by IDLC facilities. *Albert Panel Rebuttal* at 18:14-16.

Cavalier initially claimed that the second alternative for unbundling IDLC loops – multiple switch hosting – would be more feasible because Cavalier has conducted a successful test of this approach. *Vermeulen Direct* at 5:15-21. But Cavalier's trial used a particular IDLC interface – the GR 303 interface – which is not used or deployed in any Verizon Virginia IDLC systems or switches. *Albert Panel Rebuttal* at 18:21-22; *Hearing Tr* at 536:7-12 (Albert). Indeed, when Cavalier witness Vermeulen discovered that Verizon Virginia has not deployed the GR-303 interface, he agreed that multiple switch hosting was not a viable option:

> with regard to switch multihosting, we were not aware, we assumed that Verizon had GR 303 employed in the network. And when we discovered they do not, obviously switch multihosting is not an option.

Hearing Tr. at 551:13-17 (Vermeulen).

In addition, Cavalier's trial involved only one carrier – Cavalier. Multiple switch hosting used to provide UNE loops, however, would involve connecting individual GR-303 IDLC systems to the digital switches of *multiple* carriers. Such an arrangement is not technically feasible because of unresolved network reliability and network security issues. *Albert Panel Rebuttal* at 18:21-26 – 19:1-6. This is because GR-303 equipment was originally designed for a single-carrier environment. A multi-carrier environment, however, is much more sophisticated. Verizon is not aware of any vendor or industry solution that supports multi-carrier access to GR-303. This is confirmed in a letter from Alcatel, the primary manufacturer of Digital Loop Carrier systems used by Verizon. *Albert Panel Rebuttal* at 18:7-11; Exhibit D. Even other CLECs have conceded that GR-303 cannot provision unbundled loops. AT&T stated in its *Triennial Review* comments that "[t]here are provisioning, alarm reporting, and testing issues that have not yet been worked out for using GR-303 in a multi-carrier environment," and "other operational concerns must be addressed before the deployment of any solution whose underlying architecture and technology is premised on GR-303 DLCs."[6]

Even if all these problems with multiple switch hosting were solved, it would still be prohibitively expensive for CLECs because it would require them to provision multiple DS1 connections to every GR-303 digital line carrier system in a central office. *Albert Panel Rebuttal* at 18:12-20.

Finally, Cavalier proposes a sixty-day trial. The scope of Cavalier's proposed trial is not clear, but sixty days is a grossly insufficient amount of time to implement a trial in which Verizon must develop new processes, purchase, engineer, and install new hardware and software, and implement operations support system changes. Cavalier's proposed timeframe would also violate the change control requirements for customer notifications, and it would not allow for time for necessary field force methods, procedures, and training to take place. In sum, an IDLC

[6] Letter from Joan March, Director, Federal Government Affairs, AT&T Corp , to Marlene Dortch, Secretary FCC, CC Docket No 01-338, 96-98, and 98-147, at 3 (filed Dec 4, 2002).

unbundling trial would be too complicated to complete within sixty-days. *Albert Panel Rebuttal* at 19:4-11.

For all of these reasons, the Bureau should reject Cavalier's Proposed Section 11.4.

X. THE BUREAU SHOULD REJECT CAVALIER'S PROPOSAL TO REQUIRE VERIZON TO COORDINATE WITH OTHER ATTACHERS TO IMPLEMENT A UNIFIED ENGINEERING AND MAKE-READY PROCESS FOR POLE ATTACHMENTS (ISSUE C16)

Cavalier demands broad changes to a pole attachment process that it almost never uses and that would impact nearly every other attacher in Virginia. The terms Verizon proposes, by contrast, are precisely the same as those in the AT&T interconnection agreement resulting from the *Virginia Arbitration Order*. These proposals also reflect a pole attachment process that the Commission, during Verizon's 271 application in Virginia, has already found complies with the Act. *Virginia § 271 Order* ¶ 193.

During the Virginia 271 proceeding, Cavalier made the same pole attachment complaints that it does here. The Virginia Hearing Examiner rejected those complaints, concluding that "Cavalier has failed to provide any evidence that Verizon Virginia's policies and practices regarding pole attachments are discriminatory towards it or other CLECs."[7] *Virginia Hearing Examiner Report* at 95.

Cavalier nevertheless proposes a new permitting and make-ready process in which a single contractor, coordinated by Verizon, would perform all make-ready work for each pole attachment project in Virginia. As Cavalier witness Ashenden acknowledges, these projects typically involve a number of companies, including telecommunications carriers, cable companies, and electric utilities, all of whom would have to agree to this new process. *See Ashenden Direct* at 7:7-8:18; 10:21. Cavalier would make Verizon "primarily responsible for

[7] In response to Staff's question at the Hearing, the Commonwealth of Virginia has not asserted jurisdiction to regulate poles, ducts, conduits, and rights-of-way under § 224(c) of the Act

meeting with, and seeking the concurrence of, other parties attached to the poles." Cavalier's Proposed Section 16.2.2. This means that Verizon would have to renegotiate potentially all of its pole-sharing license agreements in Virginia with no guarantee that any other attacher would agree to these new terms. Verizon provides approximately 156,000 pole attachments to over 120 different parties under license agreements in Virginia. *Young Direct* at 3:2-4.

There is no legal basis for imposing such a sweeping obligation on Verizon. Nowhere does the Act or any Commission rule require Verizon to assume a role as project-coordinator for all pole attachers in Virginia. *Young Direct* at 7:6-9.

Nor has Cavalier shown that there is any pole attachment problem in Virginia to fix. Cavalier asserts that it has experienced unnecessary costs, delays, and inefficiencies as a result of Verizon's pole attachment policies, but Cavalier has not requested a single pole attachment in Virginia in the last two years. *Young Direct* at 8:6; *Young Rebuttal* at 4:8. In Verizon's section 271 proceeding in Virginia, the Virginia Hearing Examiner found that "Cavalier submitted only six applications in the last 18 months, in contrast to the 158,504 pole attachment applications of 58 telecommunications carriers and 160 other entities." *Virginia Hearing Examiner Report* at 93. Cavalier's description of the pole attachment process predates Verizon centralization of the application process, and does not reflect current procedures. *Hearing Tr.* at 337:4 – 339:7 (Young). Furthermore, to the extent Cavalier suffered delays in prior periods, Cavalier's witness Mr. Ashenden testified that those delays were often caused not by Verizon, but by "other attachers [who] did not always inform Cavalier when their work was completed." *Ashenden Rebuttal* at 8:1-2; Exhibit MA-1. *See also Ashenden Direct* at 7:16-20 (criticizing duplicative costs, not Verizon's charges). Cavalier has no basis to challenge Verizon's pole attachment procedures, and Verizon is not responsible for the costs and delays Cavalier alleges.

Even if aspects of Verizon's pole attachment process could be streamlined, it is clear that this two-party arbitration is an inappropriate proceeding in which to overhaul a licensing process that affects nearly all carriers in Virginia. The e-mails attached to Mr. Ashenden's testimony reinforce the complexity of pole attachment issues and highlight the number of interested parties that would need to be involved in discussions regarding a significant revision of the make-ready process. *See, e.g., Ashenden Rebuttal* at Exhibit MA-8 (discussing six attachers along one fifteen-mile route). Mr. Ashenden's surrebuttal testimony also demonstrates that the pole attachment process involves multiple parties with competing interests. *Ashenden Surrebuttal* at 2:19-3:9 (discussing concerns expressed by Cox Cable about using a single contractor for make-ready work).

Cavalier nonetheless claims its proposal can be implemented in this proceeding because Verizon is the "lone hold-out" to its proposal. *Ashenden Direct* at 8:15-18. Mr. Griles of Dominion Virginia Power, however, explained in his Surrebuttal Testimony, that Mr. Ashenden is mistaken. *Griles Surrebuttal* at 1:21-2:15. Dominion Virginia Power did explore the implementation of a single contractor make-ready process, but, as Mr. Griles explained, "[a]ttaching entities agreed to the concept of a single contractor for make-ready work only in theory, but not in practice." *Griles Surrebuttal* at 3:11-12. Mr. Griles recalled that "many of the attachers never returned [his] calls and others indicated that their internal discussions had raised several concerns." *Griles Surrebuttal* at 2:5-6. Mr. Ashenden's submitted surrebuttal testimony in response to Mr. Griles, but that surrebuttal does not contradict Mr. Griles and instead admits that "Cavalier has a limited amount of directly acquired information about these issues." *Ashenden Surrebuttal* at 2:11.

In short, Cavalier has not established any basis for the sweeping changes that it proposes for Verizon's pole attachment process. Cavalier's proposed contract language on this issue should therefore be rejected.

XI. THE BUREAU SHOULD REJECT CAVALIER'S PROPOSED PENALTY REGIME AND ITS MODIFICATIONS TO CONTRACT LANGUAGE APPROVED BY THE BUREAU IN THE *VIRGINIA AT&T AGREEMENT* (ISSUE C17)

This issue involves Cavalier's attempt to modify contract language approved by the Bureau in the existing *Virginia AT&T Agreement*, to require new investigative procedures and heavy penalties for allegedly "unprofessional" customer contacts. Cavalier's Proposed Sections 18.2.5 – 18.2.7; *Virginia AT&T Agreement* Sections 18.2.1 – 18.2.4. Cavalier has failed to demonstrate any need for its extreme proposal, which would impose obligations on Verizon far broader than those required by the Act. Cavalier's proposed language is, in addition, too vague to be workable; its effect (and likely intent) would be to penalize legitimate competitive activities. The Bureau should not permit Cavalier to use its interconnection contract with Verizon as a means of discouraging lawful, pro-competitive conduct that Cavalier simply may not like.

Verizon agrees that when a customer of either party mistakenly contacts the other party, that customer should be referred to the right carrier in a courteous, professional and non-disparaging manner. Verizon's proposal reflects this principle by acknowledging that "Cavalier shall be the single point of contact for Cavalier customers with regard to all services, facilities or products provided by Verizon to Cavalier and other services and products which they wish to purchase from Cavalier." Verizon's Proposed Section 18.2.1. Verizon's proposal also provides that when either party receives misdirected inquiries from the other party's customers, that carrier will refer the customer to the right carrier in a courteous, non-disparaging manner and at no charge. *Smith Direct* at 15; *Hearing Tr.* 209:4-9 (Smith); Verizon's Proposed Sections

18.2.3.2, 18.2.4. Verizon's proposal clearly and reasonably defines the parties' responsibilities and is identical to the language in the existing *Virginia AT&T Agreement.*

Cavalier's proposal, by contrast, leaves the parties' responsibilities vague and ill-defined, and prescribes stiff penalties for failure to satisfy Cavalier's subjective standard for professional conduct. For example, Cavalier's Proposed Section 18.2.4 requires each party to "provide mutually agreed referrals" to the other company's "prospective" customers when they mistakenly contact the other company. *Id.* at 18.2.4. In providing referrals, each company is not to "disparage or discriminate against the other party or its products or services" or "provide information about its own products or services." *Id* But Cavalier's proposal does not define "mutually agreed referrals" or provide any detail as to what would constitute "discrimination" against the other party. And because any Virginia resident is a "prospective customer" of Cavalier, Cavalier's proposal would effectively prevent Verizon from discussing its services with anyone who calls. *Smith Direct* at 17:6-8. Obviously, Cavalier has no right to prohibit Verizon from engaging in legitimate marketing activities.

Cavalier's proposed Section 18.2.5, likewise, seeks to impose penalties on a party whose employee fails to engage in "appropriate professional conduct," which Cavalier vaguely defines as "conduct that is in accordance with sections 18.2" of the agreement "as well as all applicable industry standards." *Id.* at 18.2.5. In other words, given the broad scope of Section 18.2 and "industry standards," inappropriate professional conduct could be anything Cavalier says it is. As Verizon witness Smith testified, none of Verizon's 3600 interconnection agreements contain penalty language like Cavalier's, and Cavalier provided no evidence of any such language in any agreement. *See Smith Direct* at 18:13-18; *Verizon's Request for Production* C17-4 and *Cavalier's Responses,* attached as Exhibit 4.

For example, under Cavalier's contract language, offering discounted Yellow Pages advertising to win back a customer would not be "appropriate professional conduct" even though this is entirely lawful, legitimate competitive behavior. Cavalier's Proposed Section 18.2.5. As Verizon witness Smith explained, Yellow Pages advertising is a competitive, unregulated business that cannot be regulated through interconnection agreement provisions. *Smith Rebuttal* at 10:20-25. Nonetheless, Cavalier proposes that such advertising discounts and other violations of Cavalier's subjective "appropriate professional conduct" standard would carry penalties of increasing amounts beginning with $1,000.00 per occurrence, payable to the "non-offending party" up to payments as high as $50,000.00 per month in the event of repeated violations. *Id.* at Sections 18.2.5, 18.2.6. Under Cavalier's proposal, then, Cavalier would be able to extract steep fines from Verizon for behavior that does not violate any statute, rule, or order, but that is merely objectionable to Cavalier. Cavalier's proposal is nothing more than an attempt to curb legitimate competitive activity.

Cavalier's proposal is unworkable, as well as anticompetitive. For example, every time either party feels that there may have been a breach of the "appropriate professional conduct" standard, Cavalier's proposal would require the other party to conduct a formal investigation and submit a written report to the other party, describing in detail factual findings and disciplinary action taken. *Smith Direct* at 17: 16-18. These investigations would be involved and time-consuming. Certainly, the parties' resources would be much better spent serving their customers than conducting investigations and drafting reports concerning alleged unprofessional contacts. *See Smith Direct* at 17: 18-21, *Hearing Tr.* 215: 4-17 (Smith) (noting expense and burden of proposed investigations).

Even if Cavalier's proposal were workable, it is unnecessary and unwarranted. Verizon has proposed language in Section 25.5 that would except claims for defamation from the limitation of liability provision. Furthermore, Cavalier produced no evidence of any systemic customer contact problems. It raised only a handful of situations dating back several years and having little to do with its proposed contract language. See *Smith Rebuttal* 10:15 – 11:5. Verizon already requires its employees to follow strict controls and guidelines with respect to the activities of other carriers and contacts with their customers. *Smith Rebuttal* at 10:7-10; *Hearing Tr.* at 205:5 – 206:11 (Smith). When another carrier believes that a Verizon employee has violated these controls or guidelines, Verizon takes corrective measures including an investigation and, if necessary, appropriate disciplinary action. *Hearing Tr.* at 205:18-22; 206:8-11 (Smith).

In any event, Cavalier's proposal is not appropriate for consideration in this arbitration, which is intended to determine the terms and conditions under which the parties will satisfy their interconnection and other network access obligations under section 251 of the Act. Neither section 251 nor anything else in the Act contemplates that state commissions will dictate the way in which companies supervise their employees or provide information to prospective customers.

The Bureau should reject Cavalier's extreme, unnecessary and anticompetitive proposal and instead approve Verizon's language – the same language the Bureau already approved for the *Virginia AT&T Agreement*.

XII. VERIZON'S PROPOSED CONTRACT LANGUAGE ON DIRECTORY LISTINGS IS FAIR TO BOTH CAVALIER AND VERIZON AND WOULD REASONABLY COMPENSATE CAVALIER FOR ANY ERRORS OR OMISSIONS IN ITS CUSTOMERS' LISTINGS (ISSUE C18)

Under the Act, Verizon is obligated to provide Cavalier and other CLECs "nondiscriminatory access" to its directory listings services. The Commission has already concluded that Verizon provides this nondiscriminatory access. *Virginia 271 Order* ¶ 153. Notwithstanding the legal standard, Cavalier's proposed language on directory listings would impose duties on Verizon that far exceed what the Act requires. Cavalier proposes several contract sections that impose on Verizon an impossibly high standard of liability, and which, not coincidentally, would also permit Cavalier to collect financial penalties whenever Verizon fails to meet this unrealistic standard. And, its new, last-minute language on credits for directory listing errors or omissions is vague and unclear and, since Cavalier offered no evidence or testimony to explain how Cavalier would interpret it, should not be included in the proposed interconnection agreement. The Bureau should adopt Verizon's proposed language on directory listings and reject Cavalier's.

A. The Bureau Should Reject Cavalier's Unnecessary And Unduly Burdensome Proposal To Require Verizon To Certify The Accuracy Of Each Directory Listing.

Cavalier's Proposed Section 19.1.5 would require Verizon to certify in writing that it has checked each and every Cavalier customer listing against the information Cavalier submitted. This proposal would be virtually impossible for Verizon to implement. *Toothman-Spencer Rebuttal* at 4:20 – 6:5; *Hearing Transcript* at 485:6 – 487:1 (Toothman). Verizon cannot simply compare Listing Verification Reports (which Verizon makes available to CLECs in electronic form to verify their customers' listings) to the Local Service Requests that Cavalier submits to create the listings, as Cavalier's language would require. While Verizon's database saves the customer's listing information, it does not always save the identification number of the Local Service Request that created that listing and, as a result, Verizon cannot readily identify which Local Service Request created a particular listing. *Toothman-Spencer Rebuttal* at 5:1-7; *Hearing Transcript* at 486.1-15; 490:21-22 (Toothman) ("I can't compare the LSR to the LVR. I don't have that information."). In addition, although Listing Verification Reports correlate listings with a specific directory, Verizon's database generally does not. Thus, in order to compare a customer listing to a Listing Verification Report, Verizon would have to create special logic for its database that would determine in which directory the listing would eventually appear. *Toothman-Spencer Rebuttal* at 5:7-12.

Cavalier's proposed language on this issue also ignores the complexity involved in the directory listings process. Cavalier implies that the directory listing process is relatively simple and that the process involves nothing more than Cavalier submitting a Local Service Request for a listing and Verizon processing it. But the process is not nearly as simple as Cavalier suggests. In many cases, Cavalier, as well as other CLECs, submit *multiple* Local Service Requests that change or modify a particular listing, right up until the time directory closes. Thus, in order to "compare" Cavalier's listings against the Listing Verification Report, Verizon would not only have to determine which Local Service Request created the listing, it may need to sort through a series of them to figure out which Local Service Request was the last and final request. *Toothman-Spencer Rebuttal* at 5:13-15.

And, although Cavalier's proposed language in 19.1.5 would, in effect, hold Verizon strictly liable for any errors in its customers' listings, it would at the same time absolve Cavalier of any need to cooperate in the directory listings process. Cavalier repeatedly implies in its testimony that it no longer intends to use the electronic Listing Verification Reports that Verizon makes available to Cavalier and other CLECs to verify their customers' listings. *Hilder Rebuttal Testimony* at 2:4-5; 7:21-22. The Commission recognized in the Virginia 271 proceeding that the Listing Verification Report is a reasonable process for ensuring the quality of listings. In the Virginia 271 proceeding, the Commission specifically approved of the use of the Listing

Verification Report and found that "the availability of the [Listing Verification Report] affords a competitor the opportunity to review its listings before publication, and further improves the accuracy of directory listings." *Virginia § 271 Order* at 168. Requiring Cavalier to review the Listing Verification Report is also consistent with Cavalier's agreement in Section 19.1.5 to language that would require both parties "to use commercially reasonable efforts to ensure the accurate listing of Cavalier Customer listings "

Furthermore, Cavalier's decision to dispense with using the Listing Verification Report will do a disservice to its customers. The goal of both parties should be to work cooperatively so that listings are as accurate as possible. Cavalier has direct contact with the customer and is in position to know exactly how its customers want their listings to appear. Its active involvement in the directory listings process is important and it should not be permitted to shift all of the responsibility for directory listings accuracy (as well as the blame) to Verizon.

In any event, Cavalier's Proposed Section 19.1.5 is unnecessary, as Verizon witness Toothman described in detail at the hearing. Verizon already has multiple layers of quality control at different stages of the directory listings process. *Hearing Transcript* at 493:18 – 496:19 (Toothman). There is no need to add Cavalier's extremely difficult and cumbersome verification procedure on top of the controls Verizon already has in place.

B. Verizon's Proposed Language On Credits For Directory Errors Or Omissions Is More Reasonable Than Cavalier's Language And Is Consistent With Manner In Which Verizon Provides Credits To Its Own Customers.

Both Cavalier and Verizon have proposed language in Section 19.1.6 that would credit Cavalier for errors or omissions in its customers' listings.

Verizon's Proposed Section 19.1.6 would fairly and reasonably compensate Cavalier by making Verizon's liability to Cavalier "comparable to" Verizon's liability to its own customers."[8] Cavalier's credits would be based on the same formula Verizon uses to calculate credits for its customers – one-half of the fixed monthly charges that the customer pays for local exchange services. Verizon's retail tariff states that Verizon's liability "[s]hall be limited to the amount of actual impairment to the customer's service and in no event shall exceed ***one-half the amount of the fixed monthly charges applicable to Local Exchange Services*** ... affected during the period covered by directory in which the error or omission occurs." Verizon Virginia Tariff No. 201, Section 1.E.3 (emphasis added).[9] In the wholesale context, this formula translates into a credit of 50% on the UNE loop rate where Cavalier serves a customer with a loop or entirely over its own facilities, and a credit of 50% on the resale charges for dial tone line and fixed usage services where Cavalier serves a customer with Verizon's resold services.[10]

On October 24, Cavalier submitted new proposed language for credits for errors or omissions in directory listings. Faced with overwhelming and undisputed evidence by Verizon witnesses that its previous proposal was based on a flawed methodology that misinterpreted Verizon's retail tariff and would credit Cavalier far in excess of credits most Verizon customers receive, Cavalier discarded its previous language and proposed a new section 19.1.6 that would based Cavalier's credits on what a "respective" Cavalier customer pays in "fixed monthly charges for local exchange services." These rates would be based on the fixed monthly charges in effect for Cavalier's Richmond exchanges.

Cavalier's new last-minute proposal should also be rejected. For one, Cavalier's new

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[8] Again, as discussed above, Verizon has proposed this language despite the fact that neither the Act nor the Commission's rules require Verizon to pay a CLEC for omissions or errors in directory listings. *Virginia § 271 Order* ¶ 171 (recognizing that the Commission's "rules do not address the assignment of liability and responsibility for restitution in these circumstances")

[9] At Staff's request, the relevant pages of Verizon Virginia's retail tariff 201 are attached as Exhibit 5

[10] Although Cavalier does not pay Verizon for a customer's line when it serves that customer using its own facilities, Verizon's proposal nonetheless allows Cavalier to receive a credit for an error or omission under these circumstances

language contains some of the same flaws as its previous language. Cavalier still bases its credits on rates paid by only a select group of customers (those in the Richmond area). These customers, not coincidentally, generally pay some of the highest "fixed monthly charges applicable to local exchange service" under Cavalier's retail tariff. Moreover, Cavalier's new language would still entitle it to a credit for any and all listing errors, no matter how minor or immaterial. As Verizon witness Spencer testified at the hearing, Verizon customers often receive *no* compensation for an error in a directory listing, but even in the cases where Verizon provides a credit, it may be less than the maximum amount allowed under the tariff. *Hearing Transcript* at 515:7 – 516:13 (Spencer); *Toothman-Spencer Direct Testimony* at 7:6-14; *Toothman-Spencer Rebuttal Testimony* at 9:6-10. This would again place Cavalier and its customers in a much better position than Verizon customers who experience an identical directory error.

Moreover, Cavalier's new language is vague and broadly defined. Cavalier now bases its proposed credits on what *Cavalier* customers pay for local exchange services rather than what Verizon customers receive as credits. But since Cavalier presented no testimony or evidence on what this language means, it is impossible for Verizon or the Bureau to know exactly how Cavalier would interpret this language and how these credits would be calculated. For example, Cavalier's customers may have very different packages from Verizon's customers, some of which could be very expensive. Verizon should not be required to pay Cavalier based on rates it charges it customers, rates over which Verizon has no control. Cavalier also proposes that these amounts "shall not exceed Verizon's charges for the same or comparable service," but it is equally unclear what this language would entail. Verizon's proposal is much more clear and reasonable and makes far more sense in a wholesale context. The Bureau should adopt

Verizon's credit proposal and reject Cavalier's new proposed language.

C. Cavalier's Remaining Proposals Concerning Directory Listing Should Also Be Rejected

Cavalier also proposes several miscellaneous contract provisions that are equally objectionable. For example, Cavalier's Proposed Section 19.1.3 would require Verizon to supply Cavalier with ALI codes as well as "other information" required to process directory listings orders. This language is unnecessary. Verizon already provides ALI codes to Cavalier (along with other CLECs), including weekly ALI code reports for all types of listings. *Toothman-Spencer Direct Testimony* at 11:7-14. But Cavalier's language is objectionable not only because it would require Verizon to turn over something it already provides, but because it would hold Verizon strictly liable for any and all errors if this unspecified "other information" is not provided to Cavalier's liking. The agreement should not include language that ties Verizon's liability for errors to such a vaguely defined condition. *Hearing Transcript* at 506:16-507:17 (Toothman).

In Section 19 1.6(c), Cavalier seeks to include language that would require Verizon, in the event of an error in a Yellow Pages listing, to notify Cavalier of any contact that Verizon or Verizon Information Services may have had with that customer and take "appropriate remedial action to correct any such error and compensate Cavalier as may be appropriate under the circumstances." Cavalier failed to submit any evidence in support of this proposed language, so it is difficult to understand exactly what this language would require. To the extent Cavalier's proposed language refers to errors in free yellow page listings (listings provided as part of basic service), Verizon's proposed language already offers Cavalier a remedy for any errors or omissions. *Toothman-Spencer Direct Testimony* at 12:5-19. To the extent Cavalier is referring to errors in *paid* yellow page advertising (paid listings are advertising), its language is inappropriate. Cavalier has no right to restrict the ability of Verizon Information Services to contact its own advertising customers that it serves through an unregulated service. Nor can the Bureau adopt such language, since it would be a direct infringement on Verizon Information Services' lawful commercial speech.

Finally, in Section 19.1.8, Cavalier proposes language that would require the parties to negotiate towards an arrangement where Cavalier has direct, unmediated access to Verizon's directory services databases. This language is superfluous and unnecessary. Verizon's legal obligation is to provide nondiscriminatory access to its directory listing services, not to a fictional directory database UNE. Moreover, even for those databases Verizon is required to unbundle as network elements, the *Triennial Review Order* makes clear that Verizon is not required to provide unmediated access to them. *Triennial Review Order* ¶ 567. In any event, if Cavalier wants to request such a change to Verizon's Operations Support Systems, it should raise this issue through Verizon's OSS Change Management process or the Ordering and Billing Forum. *Toothman-Spencer Direct Testimony* at 12: 5-19.

The Act does not require that Verizon be strictly liable for errors in directory listings. There is no legal basis for any of Cavalier's proposed contract sections and the Bureau should reject them.

XIII. VERIZON'S PROPOSED CONTRACT LANGUAGE ON ASSURANCE OF PAYMENT IS REASONABLE AND SUPPORTED BY THIS COMMISSION'S STATEMENTS OF POLICY (ISSUE C21)

Verizon's assurance of payment language in Section 20.6 of its proposed agreement permits Verizon to obtain adequate assurances of payment in the event Cavalier becomes financially unstable or unable to timely make its payments. *Verizon Response, Exhibit A* at 51-52; *Smith Direct* at 19:9-11. Verizon's proposed language is nearly identical – except for a few changes supported by the Commission's statements of policy discussed below – to the language that resulted from the Bureau's *Virginia Arbitration Order. Verizon Response, Exhibit A* at 51; *Virginia Arbitration Order* ¶ 972

Verizon's only changes to the language adopted in the *Virginia Arbitration Order* are additional provisions that clarify when Verizon can exercise its remedies and what those remedies will be. Verizon has modified these provisions to more effectively respond to the increased risk that CLECs may suddenly become insolvent and no longer worthy of credit. The recent wave of CLEC bankruptcies in general,[11] and the suddenness of WorldCom's bankruptcy in particular, have demonstrated the need for assurance of payment provisions that can take effect as soon as a CLEC begins to demonstrate an inability to pay its bills. These provisions are necessary to protect Verizon from the risk that CLECs may suddenly be unable to pay for the services Verizon is providing. Risk of non-payment is particularly pronounced in this case given Cavalier's previous failures to timely pay its bills. *See Hearing Tr.* at 313:4-18 (Smith) ("For a period of time, [Cavalier] refused to pay [its] bills in total."); *Smith Direct* at 25:18-24 (citing the observation of federal court district judge about Cavalier's tendency to litigate rather than pay its bills). Additionally, Verizon has crafted its proposed language to be consistent with the protection measures suggested by the Commission in its December 23, 2002 Policy Statement.

Cavalier may trigger these assurance of payment provisions only when it fails to pay its bills on time or shows other signs of insolvency or lack of creditworthiness and if and only if Cavalier has no bona fide dispute as to the substance of the bills, and when the unpaid amounts are substantial. *Smith Rebuttal* at 12:8-18; *Hearing Tr* at 310:10-12 (Smith) ("[Failure to timely pay a bill occurs] when a customer does not pay the bill by the pay-by date [and] does not submit a dispute for charges that they disagree with."). Verizon's proposed language permits Verizon to

[11] A list of recent CLEC bankruptcies is attached at Exhibit 6

request from Cavalier a letter of credit equal to two months' anticipated charges, but only permits Verizon to draw upon the letter of credit to satisfy bills that are more than 30 days in arrears. Verizon's Proposed Section 20.6; *Smith Rebuttal* at 12:8-18.

Cavalier has proposed to delete *all* of Verizon's assurance of payment language, including the language previously adopted by the Bureau in the Virginia arbitration. This would leave *no* assurance of payment provision in the contract at all. Cavalier's language would force Verizon to extend Cavalier an unlimited line of credit – a particularly unreasonable position given the wave of CLEC bankruptcies in recent years. *See Smith Rebuttal* at 14:5-6 ("The industry has become much more volatile since the current agreement was signed in 1997. Many carriers have gone bankrupt, including large carriers."); *Hearing Tr.* at 316:17-317:5 (Smith) ("At this moment Cavalier is paying their bills on time, but we do believe that with the volatility in the industry, that at any moment, things could change. We've seen that happen repeatedly, with 145 bankruptcies or more over the past few years. So you know, at the moment, I don't know that they are, but I couldn't guarantee that they aren't. So I think Verizon is just looking for protection for services – or payment for services that we have already provided."). There is no reason under the Act, the Commission's rules, or sound public policy to require Verizon to assume the financial risks of a CLEC's business plans. *Smith Rebuttal* at 14:14-17 ("Cavalier is trying to shift a considerable portion of the financial risks associated with its business model to Verizon, by forcing Verizon to assume the risk of non-payment in the event that Cavalier becomes uncreditworthy. There is no reason why Verizon should have to assume this risk. . . Verizon's proposed Section 20.6 places this risk precisely where it belongs – with Cavalier and its investors."). Indeed, as discussed above, the Bureau has rejected the notion that Verizon is not entitled to any assurance of payment protection. *Virginia Arbitration Order* ¶ 727

("Verizon has a legitimate business interest in receiving assurances of payment ... from its [CLEC] customers.").

Verizon's proposed changes to the language in the *Virginia AT&T Agreement* were intended to be consistent with the December 23, 2002 Policy Statement, in which the Commission suggested four potential "additional protections against nonpayment" for the incumbent LECs' consideration:

1. Proven History of Late Payment – a trigger requiring a deposit should the carrier fail to pay undisputed, non-*de minimis* bills in any two of the most recent twelve months. Policy Statement, *Verizon Petition for Emergency Declaratory and Other Relief*, WC Docket No. 02-202, FCC 02-337, ¶ 6 (rel. Dec. 23, 2002).
2. Reduced Notice Periods – where allowed by law, incumbent LECs could reduce the notice period for refusal or discontinuance of service. *Id*
3. Accelerated Billing Cycles – incumbent LECs could require CLECs to pay bills more frequently than every thirty days, thus reducing exposure to pre-bankruptcy petition debt. *Id.*
4. Billing in Advance – for usage-based services, incumbent LECs could bill delinquent CLECs in advance, basing the amount of the bill on estimated average usage over a prior sample period. *Id.*

Verizon's proposal tracks the Commission's first and fourth recommendations. In particular, subsections (x) and (y) of Verizon's Proposed Section 20.6 state that Verizon is entitled to "additional assurance of payment, consisting of monthly advanced payments of estimated charges," should Cavalier fail to timely pay two or more bills in a sixty-day period or three or more bills in a 180-day period. Verizon's Proposed Section 20.6 contains specific protections for Cavalier to ensure that Verizon cannot invoke the assurance of payment provisions without good cause. For example, Verizon's proposal explicitly exempts from the trigger any bills that are the subject of bona fide disputes, and further requires that the bill amounts reach a threshold level (more than five percent of the total amount billed in the relevant period) to trigger the advance billing measure. Verizon does not invoke the assurance of payment provision if Cavalier does not pay a bill that it does not receive. As Verizon witness Smith testified at the Hearing:

> [A]ctually the contract I believe has language in it that says either the payment is due 30 days from the bill date or 20 days from the receipt of the bill, whichever is later.

Hearing Tr. at 311:15-19 (Smith). *See also* Verizon's Proposed Section 28.9.1.

Thus, under Verizon's proposal, the "proven history of late payment" trigger works in conjunction with the "billing in advance" measure. This is consistent with the Bureau's recommendation that "the incumbent LEC tariffs specify that advance billing is triggered only by concrete, objective standards that are narrowly tailored to target only those customers that pose a genuine risk of nonpayment, in order to prevent any unreasonable discrimination among customers." *Policy Statement* at ¶ 27. A proven history of late payment is just such a nondiscriminatory, narrowly-tailored trigger.

Cavalier may argue that it is financially stable and thus the assurance of payment provisions are not necessary in Cavalier's case. However, should this Commission strike Verizon's assurance of payment provisions, other carriers could opt into Cavalier's agreement in Virginia, which would lack adequate assurance of payment provisions. 47 U.S.C. § 252(i). Any of these carriers could become insolvent, and Verizon would be left with no mechanism for recovering payment for the services it has provided these CLECs.

Given that Verizon's proposed contract language is consistent with the measures suggested by the Commission in its December 23, 2002 Policy Statement, the Bureau has previously acknowledged Verizon's right to include assurance of payment language in its interconnection agreements, and Cavalier has not suggested any alternative language (but rather argues for its complete deletion), the Bureau should adopt Verizon's proposed language in its entirety.